Sam Kiva, d/b/a Sam Kiva Management, and 1056 Boynton Realty Corp. *and* Local 32E, Service Employees International Union, AFL–CIO. Case 2–CA–32052

September 30, 1999

DECISION AND ORDER

BY MEMBERS LIEBMAN, HURTGEN, AND BRAME

Upon a charge filed by the Union on March 11, 1999, the General Counsel of the National Labor Relations Board issued a complaint on April 29, 1999, against Sam Kiva, an individual, and other unknown individuals, d/b/a Sam Kiva Management, and 1056 Boynton Realty Corp., Joint Employers, the Respondents, alleging that they have violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondents failed to file an answer within the 14-day time period set forth in Section 102.20 of the Board's Rules and Regulations.[1] On June 2, 1999, the Respondents filed a letter with the Region that purported to answer the allegations of the complaint.

On June 21, 1999, the General Counsel filed a Motion for Summary Judgment with the Board. On June 23, 1999, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondents filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

The complaint alleges that on November 30, 1998, the Union was certified as the exclusive collective-bargaining representative of a unit of the Respondents' building service employees. The complaint further alleges that since that date, despite the Union's bargaining requests, the Respondents have failed and refused to meet and bargain with the Union for an initial collective-bargaining agreement, in violation of Section 8(a)(5) and (1) of the Act.

The undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated May 18, 1999, notified the Respondents that unless an answer to the complaint were received by June 1, 1999, a Motion for Summary Judgment would be filed. Further, the motion states without contradiction that on June 2, 1999, the Region received a letter dated May 13, 1999 (postmarked May 27, 1999), from the Respondents that stated in full:

> Please be advised that we are currently negotiating with Local 32E. Mr. Kiva had a meeting with Mr. Charles Ayers and Mr. Robert Chartier of Local 32E. We presently have in our possesion [sic] a contract which was given to us for review. As Mr. Tabak, one of the chief officers of the corporation was out of the country, we were unable to actively pursue the matter. This matter will take first priority upon his return.

The Respondents apparently are not represented by counsel in this proceeding.

According to the General Counsel's motion, the Region replied to this letter by letter dated June 3, 1999, which advised the Respondents that their May 13 letter did not constitute an answer to the complaint, and which gave the Respondents a further extension of time to June 11, 1999, in which to file an answer. The Respondents have not subsequently filed any other document with the Region or the Board.

The General Counsel's motion contends that the Respondents have failed to file an answer that specifically admits, denies, or explains each of the facts in the complaint or states that the Respondents are without knowledge of such facts, as required by Section 102.20 of the Board's Rules and Regulations. Thus, the General Counsel asserts that in accordance with Section 102.20 of the Rules, all allegations in the complaint should be deemed to be admitted to be true and the Board should grant the motion for summary judgment and find that the Respondent has violated Section 8(a)(5) and (1) as alleged.

Contrary to the General Counsel, we find that summary judgment is not appropriate here. Instead, given the Respondents' pro se status, we find that the Respondents' letter dated May 13, 1999, is sufficiently responsive to the complaint to warrant a hearing on the merits. The Respondents' letter effectively denies that the Respondents are refusing to bargain with the Union. Further, the letter affirmatively states that active bargaining will occur as soon as the corporation's chief officer returns.

The Board "typically has shown some leniency toward a pro se litigant's efforts to comply with our procedural rules." *A.P.S. Production*, 326 NLRB 1296 (1998).[2] Under this precedent, it is sufficient for a pro se respondent to "respond effectively in the negative to the com-

[1] Sec. 102.20 of the Board's Rules and Regulations states in full:

> The respondent shall, within 14 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in the answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

[2] See, e.g., *Dismantlement Consultants*, 312 NLRB 650, 651 fn. 6 (1993); *Tri-Way Security*, 310 NLRB 1222, 1223 fn. 5 (1993); *Acme Building Maintenance*, 307 NLRB 358 fn. 6 (1992); and *Steeltec Inc.*, 302 NLRB 980 (1991).

plaint allegations containing the operative facts of the alleged" unfair labor practice. *Carpentry Contractors*, 314 NLRB 824, 825 (1994). Here, the Respondents' claim that they are "currently negotiating with Local 32E" is, particularly given the Respondents' pro se status, an adequate denial of the substance of the complaint's allegation of a failure and refusal to meet and bargain with the Union.

Accordingly, the General Counsel's Motion for Summary Judgment is denied.

ORDER

The General Counsel's Motion for Summary Judgment is denied.

IT IS FURTHER ORDERED that this proceeding is remanded to the Regional Director for Region 2 for further appropriate action.